

STATE OF MICHIGAN  
COURT OF APPEALS

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JOHN W. HUMANIC,

Plaintiff-Appellant,

v

CNA INSURANCE COMPANIES ,

Defendant-Appellee.

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UNPUBLISHED

June 24, 1997

No. 195081

Oakland Circuit Court

LC No. 94-478756-CL

Before: Markman, P.J., and Holbrook, Jr., and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition to defendant of plaintiff's age discrimination claim. MCR 2.116(C)(10). We affirm.

Plaintiff argues that because he presented a prima facie case of age discrimination and offered evidence to demonstrate that there was a material issue of fact as to whether the stated reason for his discharge, misconduct, was pretextual, summary disposition was inappropriate. He also argues that there was sufficient evidence from which an inference could be drawn that age was a motivating factor in his discharge. We disagree.

Plaintiff first attempted to establish a prima facie case of disparate treatment by showing that he was in a protected class and was treated differently than similarly situated employees for the same or similar conduct. See *Barnell v Taubman Co, Inc*, 203 Mich App 110, 120-121; 512 NW2d 13 (1993). Based on the lower court record, we find that there was no evidence that plaintiff was treated differently than younger managing trial attorneys who had engaged in misconduct. All were summarily terminated as was plaintiff.

Plaintiff next attempted to offer a prima facie case of age discrimination by showing that he was in a protected class, was discharged, was qualified for his position, and was replaced by a younger worker. *Id.* Plaintiff did so. However, once defendant articulated a legitimate, nondiscriminatory reason for plaintiff's discharge, plaintiff was required to establish the existence of a genuine issue of material fact that defendant's proffered reason was unworthy of credence, and that illegal age discrimination was more likely the true motivation in his discharge. *Barnell, supra* at 121; *Plieth v St*

*Raymond Church*, 210 Mich App 568, 572; 534 NW2d 164 (1995). Here, plaintiff concedes that the alleged instances of misconduct occurred, but downplays their significance. Plaintiff's evidence that age discrimination was defendant's true motivation included (1) age-related comments made to him by coworkers and a supervisor, (2) a rumor he had heard several years earlier that the individual who fired him liked young, aggressive employees, and (3) defendant's recognition of plaintiff's fifteen-year anniversary with the company. Given that none of these incidents involved the persons who ultimately made the decision to discharge plaintiff, we find that plaintiff has failed to raise a genuine issue of material fact whether defendant's proffered reason for his discharge was a mere pretext for age discrimination. See *Matras*, *supra* at 685-686. Accordingly, summary disposition was properly granted.

Affirmed.

/s/ Stephen J. Markman  
/s/ Donald E. Holbrook, Jr.  
/s/ Peter D. O'Connell